

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

RAMONA DAVIS)
Plaintiff,) No. 10 CH 21850
v.)
SUPERINTENDENT OF POLICE OF THE)
CITY OF CHICAGO and POLICE BOARD)
OF THE CITY OF CHICAGO)
Defendant.)
Hon. Kathleen M. Pantle

ORDER

This matter comes before the Court on the Defendant, Superintendent of the Police of the City of Chicago, Garry McCarthy's Motion to Dismiss Plaintiff's Complaint for Administrative Review pursuant to 735 ILCS 5/2-619(5). Defendant contends that this action was not filed within the time allowed by law.

Plaintiff, Ramona Davis ("Davis"), filed a Complaint for Administrative on June 17, 2011. The Complaint seeks a judicial review of the decision that was entered by the Police Board on April 16, 2009. (Mot. ¶ 1). The decision discharged Davis from her position as a police officer with the Department of Police and from the services of the City of Chicago. (Findings and Decision 4-16-09). On May 20, 2009, Davis filed a Complaint for Administrative Review, Case No. 09 CH 16926. (Mot. ¶ 2). On November 8, 2009, Davis' case was dismissed for want of prosecution. (Mot. ¶ 3). On or about August 11, 2010, Davis filed a Motion to Vacate the Dismissal for Want of Prosecution. (Mot. ¶ 4). On August 18, 2010, the Motion to Vacate the Dismissal was denied. (Mot. ¶ 5). Davis then appealed the decision denying her Motion to Vacate the Dismissal, Appellate Court Case No. 10-2676. (Mot. ¶ 6). On March 18, 2011, the Appellate Court dismissed the case stating that the appeal was premature. (Order, 3-18-11).

Pursuant to Section 5/2-619(a)(5) a cause of action may be dismissed if the action was not commenced within the time limited by the law. A section 2-619 motion admits the legal sufficiency of the plaintiff's claim, but asserts affirmative matter that defeats the claim. *Hubble v. Bi-State Development Agency of the Illinois-Missouri Metropolitan Dist.*, 238 Ill.2d 262, 267 (2010). When ruling on a motion

to dismiss brought pursuant to section 2-619, a circuit court must interpret all pleadings and supporting documents in the light most favorable to the nonmoving party. *Id.*

The Administrative Review Act requires that every action to review a final administrative decision be commenced by the filing of a complaint and the issuance of a summons within 35 days from the date that a copy of the decision was served upon the party affected by the decision. 735 ILCS 5/3-103. Where a complaint for administrative review is filed more than 35 days after service of an administrative agency's final decision, the Circuit Court does not have subject matter jurisdiction to hear the matter. *Rodriguez v. Sheriff's Merit Comm'n*, 218 Ill. 2d 342, 356 (2006).

Where an action is dismissed for want of prosecution, the plaintiff may commence a new action within one year or within the remaining period of limitation, whichever is greater, after the action is dismissed for want of prosecution. 735 ILCS 5/13-217.

In the instant matter, Defendants assert that Davis' Complaint is untimely and should be dismissed. This Court agrees. Pursuant to Section 13-217, Davis had one year to refile her case with the Court. Instead, Davis chose to appeal the Order denying her Motion to Vacate the Dismissal for Want of Prosecution. As stated by the Appellate Court in its Order, a cause for want of prosecution is not a final and appealable order. An order that is not final and appealable may not be entertained by the Appellate Court. *See Welch v. City of Evanston*, 181 Ill. App. 3d 49 (1st Dist. 1989) (If the order appealed from is not final and appealable, the notice neither deprives the trial court of jurisdiction nor vests the appellate court with jurisdiction).

Davis cites to 735 ILCS 5/2-619(a)(3), noting that an action must be dismissed if there is a cause of action pending between the same parties for the same cause. (Resp. ¶ 3). Davis further relies on *State ex rel. Beeler, Schad & Diamond, P.C. v. Target Corp.*, 367 Ill. App. 3d 860 (2006) for the premise that once the Appellate Court's jurisdiction attaches the cause is beyond the jurisdiction of the trial court. (Resp. ¶ 4). Davis' argument is misguided. The Appellate Court's jurisdiction attaches upon the *proper filing of a notice of appeal*. *Id.* at 863 (*emphasis added*). Davis' Notice of Appeal was improper as it was

premature. Furthermore, even if Davis' Notice of Appeal was proper, she had the option of bringing a motion to dismiss the appeal, if she thought that the appeal would have been detrimental to her cause.

Davis also relies on 735 ILCS 5/13-217 and *Behling v. Department of Labor*, 171 Ill. App. 3d 804 (1st Dist. 1998) as the authority for her to re-file her administrative review action because her initial complaint for administrative review was timely. (Resp. ¶ 2). This argument is also misguided. Section 13-217 allows for actions to be refiled within a year of the entry of an order dismissing the cause for want of prosecution. In *Behling*, the plaintiff moved to reinstate the original action after it was dismissed for want of prosecution. *Id.* The court denied the plaintiff's motion to reinstate prompting him to re-file his action pursuant to Section 13-217 which the Circuit Court allowed. *Id.* The *Behling* Court makes no mention of the plaintiff failing to file within a year of the dismissal for want of prosecution. *Id.* The *Behling* Court does however, cite to Section 13-217 as the authority which allows plaintiff to refile. *Id.*

The instant matter is distinguishable. It can be inferred that the plaintiff in *Behling* refiled his cause of action within a year of the entry of the order dismissing his case for want of prosecution. Unlike the plaintiff in *Behling*, Davis did not refile her action within one year. While Davis may not have been aware of this option at the time that she filed her Notice of Appeal, this Court is not allowed to make exceptions where litigants are unaware of or do not understand the filing deadlines for their respective causes of action.

Defendant's Motion to Dismiss is granted with prejudice.

This is a final Order disposing of all litigation in this matter.

DATE: November 21, 2011

